

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

CIVIL ACTION NO.
SA-11-CA-360-OLG-JES-XR
[Lead case]

DEFENDANTS' ADVISORY REGARDING TRIAL ON 2013 REDISTRICTING PLANS

Defendants submit this Advisory to outline their position on matters pertaining to the upcoming trial on the 2013 redistricting plans and to respond to certain items contained in the Plaintiffs' Joint Advisory (ECF No. 1439) ("Joint Advisory"). In support thereof, Defendants respectfully offer the following:

1. Time Limits. In their Joint Advisory, Plaintiffs indicate that an estimated 18 hours is needed to present their cases-in-chief on the Texas House and congressional plans combined. Plaintiffs advise that their 18-hour estimate should not include Defendants' cross-examination of Plaintiffs' witnesses. ECF No. 1439 at 1-2.

Defendants believe the Court should impose time limits on each side's presentation of its case-in-chief. Defendants agree that any time limit imposed on a side's case-in-chief should not include the time associated with cross-examination by the opposing side, and should instead be charged to the cross-examining party.

Defendants propose an allotment of 15 hours per side on the Texas House and congressional plans combined. Defendants propose having each side designate an individual charged with keeping the time utilized each trial day, and that at the end of each day the two representatives would provide a reconciled report of time utilized by each side to the Court.

2. Opening and Closing Statements. In light of the compressed time schedule and in the interest of ensuring an efficient use of the Court's and parties' time, Defendants seek guidance from the Court as to whether the Court wishes the parties to forego the presentation of live opening or closing statements at trial. As an alternative to live presentations, Defendants suggest written opening submissions of no more than 8-10 pages of text per side. In the event the Court prefers to hear live opening or closing presentations, Defendants request an opportunity to present opening and closing statements at trial. Defendants further suggest that if the Court decides to hear opening or closing statements live at trial, any such statements should count against a side's time allotment.

3. Order of Trial Presentation. Defendants propose that the presentation of witnesses follow the region-by-region approach utilized in the 2014 trial proceedings. In addition, to the extent any of Defendants' witnesses will testify as to only one region or as to only one of the challenged plans, Defendants suggest that these witnesses—assuming their scheduling availability—should be permitted to testify after the presentation of any Plaintiffs' witnesses in the same grouping. In an effort to ensure an

efficient trial schedule, and in light of the Court's directive that the claims on the Texas House plan will proceed first at trial (ECF No. 1389 at 5), Defendants propose that the parties present their witnesses in the following order: (i) lay and expert witnesses testifying as to only one region of the House plan, completed on a region-by-region basis; (ii) lay and expert witnesses testifying as to the House plan as a whole; (iii) lay and expert witnesses testifying as to only one region of the congressional plan, completed on a region-by-region basis; (iv) lay and expert witnesses testifying as to the congressional plan as a whole; and (v) lay and expert witnesses testifying as to the House and congressional plans as a whole.

4. Expert Reports. In their Joint Advisory, Plaintiffs note that "if the parties are permitted to admit their expert witness reports into evidence, prior to a detailed explanation of the contents, it will streamline the direct examination considerably." ECF No. 1439 at 3. Defendants object to the admission of any expert reports into evidence. Expert reports constitute inadmissible hearsay because they are out-of-court statements by expert witnesses offered to prove their truth. *See* Fed. R. Evid. 801(c); *Bianco v. Globus Med., Inc.*, 30 F. Supp. 3d 565, 570 (E.D. Tex. 2014).

Date: June 26, 2017

Respectfully submitted.

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